

FILED

APR 24 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEON MESSERLY,

Defendant.

CR-09-39-GF-DLC-RKS

ORDER

This case was referred to United States Magistrate Judge Keith Strong for a revocation hearing and findings and recommendations. Judge Strong entered findings and recommendations on April 8, 2013. He found that Messerly violated Special Condition #5 of his supervised release by consuming alcohol and Special Condition # 2 by failing to attend substance abuse treatment sessions. He recommended that this Court revoke Messerly's supervised release and impose a sentence of 8 months custody, to be followed by 28 months supervised release.

No objections have been filed by either party, and Judge Strong's findings and recommendations are therefore reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach, Inc.*, 656 F.2d 1309, 1319 (9th Cir. 1981).

There is no clear error in Judge Strong's findings. Messerly admitted the violations. Judge Strong is also correct that the United States Sentencing Guidelines call for 4 to 10 months imprisonment in this case. No circumstances justify a sentence outside these guidelines. The violations were significant and occurred after previous warnings from the Probation Office. A mid-range guidelines sentence is appropriate because this is Messerly's first revocation and he does not pose an immediate threat to the community. However, because of the correlation between violence and alcohol use in Messerly's past, the Court will impose the maximum period of supervised release to help protect the community following his release.

IT IS ORDERED that Judge Strong's Findings and Recommendations (doc. 80) are ADOPTED in full and Judgment shall be entered accordingly.

Dated this 24th day of April 2013.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive, flowing style.

Dana L. Christensen, District Judge
United States District Court